

**LAW AND
CONTEMPORARY
PROBLEMS**

**VOLUME 41
1977**

SCHOOL OF LAW

•

DUKE UNIVERSITY

COPYRIGHT © 1977, 1978 BY DUKE UNIVERSITY

PRINTED IN THE UNITED STATES OF AMERICA, BY
UNITED PRINTING SERVICES, INC.
NEW HAVEN, CONNECTICUT 06513

LAW AND CONTEMPORARY PROBLEMS

A QUARTERLY PUBLISHED BY THE DUKE UNIVERSITY SCHOOL OF LAW

Subscription price: \$20.00 per year (U.S. and Possessions);

\$23.00 per year Foreign; Single Copies: \$10.00

DAVID L. LANGE, *General Editor*

J. DAVID VELLEMAN, ANDREW BERLIN, AND AMY H. GERY, *Senior Editorial Assistants*

KENNETH ANTLEY, HELEN AULL, MARY ELLEN BLADE, MICHAEL BLAHA, KAREN CYR, BARBARA ELKIN,
DONALD FEDDERLY, KEVIN GILBOY, HUGH GORDON, JUDY HERRIN, CHARLES HUNTER, LOUIS KORT,
RITA MCCONNELL, SUSAN PHILP, AND RACHEL STEELE, *Student Editorial Assistants*

EDITORIAL COMMITTEE

PHILIP COOK, ROBINSON O. EVERETT, JOEL L. FLEISHMAN, CLARK C. HAVIGHURST,
WILLIS D. HAWLEY, BETSY LEVIN, A. KENNET PYE, LAWRENCE ROSEN,
LESTER M. SALAMON, CLIVE M. SCHMITTHOFF, MELVIN G. SHIMM,
JAMES W. VAUPEL, JOHN C. WEISTART, AND DAVID L. LANGE (CHAIRMAN)

Views expressed in articles published in this periodical are to be attributed to their authors
and not the periodical, its editors, or Duke University.

CONTENTS

WINTER 1977

CRIMINAL PROCESS IN THE SEVENTIES

PHILIP J. COOK AND A. KENNETH PYE

Special Editors for this Symposium

	Page
REFORM OF THE FEDERAL CRIMINAL LAWS:	
ISSUES, TACTICS, AND PROSPECTS <i>Louis B. Schwartz</i>	1
REFORM OF STATE CRIMINAL LAW AND PROCEDURE <i>B. J. George, Jr.</i>	63
PLEADING GUILTY: A CRITIQUE OF FOUR MODELS <i>H. Richard Uviller</i>	102
CURRENT PERSPECTIVES IN CORRECTIONS:	
A CACOPHONY <i>Herbert S. Miller</i>	132
PUNISHMENT AND CRIME: A CRITIQUE OF CURRENT FINDINGS CONCERNING THE PREVENTIVE EFFECTS OF PUNISHMENT <i>Philip J. Cook</i>	164
THE USES OF SOCIAL SCIENCE IN TRIALS WITH POLITICAL AND RACIAL OVERTONES: THE TRIAL OF JOAN LITTLE <i>John B. McConahay,</i> <i>Courtney J. Mullin and Jeffrey Frederick</i>	205

WORK RELEASE IN NORTH CAROLINA—

A PROGRAM THAT WORKS!	<i>Ann D. Witte</i>	230
SPECIALIZATION IN CRIMINAL LAW	<i>Michael H. Kahn</i> <i>and Lisa Davidson Kahn</i>	252

SPRING 1977

CONTEMPORARY PERSPECTIVES IN CONFLICT OF LAWS:
ESSAYS IN HONOR OF DAVID F. CAVERS

ARTHUR T. VON MEHREN, KURT H. NADELMANN,
AND DONALD T. TRAUTMAN
Special Editors for this Symposium

		Page
BIOGRAPHY OF DAVID F. CAVERS		vi
A GREETING TO DAVID F. CAVERS	<i>Arthur T. von Mehren,</i> <i>Kurt H. Nadelmann, and Donald T. Trautman</i>	vii
GLANCING AT THE CONTENT OF SUBSTANTIVE RULES UNDER THE JURISDICTION-SELECTING APPROACH	<i>Rodolfo De Nova</i>	1
CHOICE OF LAW: A WELL-WATERED PLATEAU	<i>Robert A. Leflar</i>	10
CHOICE OF LAW AND THE PROBLEM OF JUSTICE	<i>Arthur T. von Mehren</i>	27
ENGLISH JUDGMENTS IN FOREIGN CURRENCY: A "PROCEDURAL" REVOLUTION	<i>J.H.C. Morris</i>	44
CLOUDS OVER INTERNATIONAL EFFORTS TO UNIFY RULES OF CONFLICT OF LAWS	<i>Kurt H. Nadelmann</i>	54
TESTIMONIAL PRIVILEGES AND CONFLICT OF LAWS	<i>Willis L. M. Reese,</i> <i>Barry D. Leiwant</i>	85
THE RELATION BETWEEN AMERICAN CHOICE OF LAW AND FEDERAL COMMON LAW	<i>Donald T. Trautman</i>	105
DRAFTING NATIONAL LEGISLATION ON CONFLICT OF LAWS: THE SWISS EXPERIENCE	<i>Frank Vischer</i>	131
THE FUTURE OF CHOICE OF LAW FOR TORTS: WHAT PRINCIPLES SHOULD BE PREFERRED?	<i>Russell J. Weintraub</i>	146
APPENDICES: I. PRINCIPAL PUBLICATIONS OF DAVID F. CAVERS		164
II. MEMORANDUM TO DEAN MILLER FROM DAVID F. CAVERS: SUGGESTIONS WITH REFERENCE TO THE PROPOSED DUKE LAW REVIEW [1932]		167

SUMMER 1977

REWEAVING THE CORPORATE VEIL

DEBORAH A. DEMOTT
Special Editor for this Symposium

	Page
FOREWORD	<i>Deborah A. DeMott</i> 1
THINKING STRAIGHT ABOUT CORPORATE LAW REFORM	<i>Bayless Manning</i> 3
AN APPRAISAL OF THE COSTS AND BENEFITS OF GOVERNMENT-REQUIRED DISCLOSURE: SEC AND FTC REQUIREMENTS	<i>George J. Benston</i> 30
USING DISCLOSURE TO ACTIVATE THE BOARD OF DIRECTORS	<i>Elliott J. Weiss and Donald E. Schwartz</i> 63
THE IMPACT OF THE SEC ON CORPORATE GOVERNANCE ...	<i>A.A. Sommer, Jr.</i> 115
FEDERAL CORPORATE LAW, FEDERALISM, AND THE FEDERAL COURTS	<i>Gordon G. Young</i> 146
REWEAVING THE CORPORATE VEIL: MANAGEMENT STRUCTURE AND THE CONTROL OF CORPORATE INFORMATION	<i>Deborah A. DeMott</i> 182
CORPORATE RESPONSE TO A NEW ENVIRONMENT	<i>Wm. Van Dusen Wishard</i> 222

AUTUMN 1977

THE ECONOMICS OF BANKRUPTCY REFORM

JOHN H. MOORE
Special Editor for this Symposium

	Page
FOREWORD	<i>John H. Moore</i> 1
FINANCIAL MARKETS, DEFAULT, AND BANKRUPTCY: THE ROLE OF THE STATE	<i>William H. Meckling</i> 13
THE WEALTH TRANSFERS OF BANKRUPTCY: SOME ILLUSTRATIVE EXAMPLES	<i>Merton H. Miller</i> 39
SOME ECONOMIC FUNDAMENTALS FOR AN ANALYSIS OF BANKRUPTCY	<i>J. Fred Weston</i> 47
THEORY AND REALITY IN BANKRUPTCY: THE SPHERICAL CHICKEN	<i>Philip Shuchman</i> 66

THE COSTS OF BANKRUPTCY	<i>John C. Weistart</i>	107
DISCUSSION		123
APPENDIX: THE IMPACT OF MATURITY REGULATION ON HIGH INTEREST		
RATE LENDERS AND BORROWERS	<i>George J. Benston</i>	179

ARTICLES INDEX

VOLUME 41

- AN APPRAISAL OF THE COSTS AND BENEFITS OF GOVERNMENT-REQUIRED DISCLOSURE: SEC AND FTC REQUIREMENTS, No. 3, at 30
- BIOGRAPHY OF DAVID F. CAVERS, No. 2, at vi
- CHOICE OF LAW: A WELL-WATERED PLATEAU, No. 2, at 10
- CHOICE OF LAW AND THE PROBLEM OF JUSTICE, No. 2, at 27
- CLOUDS OVER INTERNATIONAL EFFORTS TO UNIFY RULES OF CONFLICT OF LAWS, No. 2, at 54
- CORPORATE RESPONSE TO A NEW ENVIRONMENT, No. 3, at 222
- THE COSTS OF BANKRUPTCY, No. 4, at 107
- CURRENT PERSPECTIVES IN CORRECTIONS: A CACOPHONY, No. 1, at 132
- DRAFTING NATIONAL LEGISLATION ON CONFLICT OF LAWS: THE SWISS EXPERIENCE, No. 2, at 131
- THE ECONOMICS OF BANKRUPTCY REFORM: DISCUSSION, No. 4, at 123
- THE ECONOMICS OF BANKRUPTCY REFORM: SPECIAL EDITOR'S FOREWORD, No. 4, at 1
- ENGLISH JUDGMENTS IN FOREIGN CURRENCY: A "PROCEDURAL" REVOLUTION, No. 2, at 44
- FEDERAL CORPORATE LAW, FEDERALISM, AND THE FEDERAL COURTS, No. 3 at 146
- FINANCIAL MARKETS, DEFAULT, AND BANKRUPTCY: THE ROLE OF THE STATE, No. 4, at 13
- THE FUTURE OF CHOICE OF LAW FOR TORTS: WHAT PRINCIPLES SHOULD BE PREFERRED? No. 2, at 146
- A GREETING TO DAVID F. CAVERS, No. 2, at vii
- GLANCING AT THE CONTENT OF SUBSTANTIVE RULES UNDER THE JURISDICTION-SELECTING APPROACH, No. 2, at 1
- THE IMPACT OF MATURITY REGULATION ON HIGH INTEREST RATE LENDERS AND BORROWERS, No. 4, at 179
- THE IMPACT OF THE SEC ON CORPORATE GOVERNANCE, No. 3, at 115
- MEMORANDUM TO DEAN MILLER FROM DAVID F. CAVERS: SUGGESTIONS WITH REFERENCE TO THE PROPOSED DUKE LAW REVIEW [1932], No. 2, at 167
- PLEADING GUILTY: A CRITIQUE OF FOUR MODELS, No. 1, at 102
- PRINCIPAL PUBLICATIONS OF DAVID F. CAVERS, No. 2, at 164
- PUNISHMENT AND CRIME: A CRITIQUE OF CURRENT FINDINGS CONCERNING THE PREVENTIVE EFFECTS OF PUNISHMENT, No. 1, at 164
- REFORM OF STATE CRIMINAL LAW AND PROCEDURE, No. 1, at 63
- REFORM OF THE FEDERAL CRIMINAL LAWS: ISSUES, TACTICS, AND PROSPECTS, No. 1, at 1
- THE RELATION BETWEEN AMERICAN CHOICE OF LAW AND FEDERAL COMMON LAW, No. 2, at 105
- REWEAVING THE CORPORATE VEIL: MANAGEMENT STRUCTURE AND THE CONTROL OF CORPORATE INFORMATION, No. 3, at 182
- SOME ECONOMIC FUNDAMENTALS FOR AN ANALYSIS OF BANKRUPTCY, No. 4, at 47
- SPECIALIZATION IN CRIMINAL LAW, No. 1, at 252
- TESTIMONIAL PRIVILEGES AND CONFLICT OF LAWS, No. 2, at 85
- THEORY AND REALITY IN BANKRUPTCY: THE SPHERICAL CHICKEN, No. 4, at 66
- THINKING STRAIGHT ABOUT CORPORATE LAW REFORM, No. 3, at 3
- THE USES OF SOCIAL SCIENCE IN TRIALS WITH POLITICAL AND RACIAL OVERTONES: THE TRIAL OF JOAN LITTLE, No. 1, at 205
- USING DISCLOSURE TO ACTIVATE THE BOARD OF DIRECTORS, No. 3, at 63
- THE WEALTH TRANSFERS OF BANKRUPTCY: SOME ILLUSTRATIVE EXAMPLES, No. 4, at 39
- WORK RELEASE IN NORTH CAROLINA—A PROGRAM THAT WORKS!, No. 1, at 230

AUTHOR INDEX

VOLUME 41

- | | |
|---|---|
| BENSTON, GEORGE J., No. 3, at 30; No. 4, at 179 | NADELMANN, KURT H., No. 2, at vii, 54 |
| COOK, PHILLIP J., No. 1, at 164 | REESE, WILLIS L.M., No. 2, at 85 |
| DE NOVA, RODOLFO, No. 2, at 1 | SCHWARTZ, DONALD E., No. 3, at 63 |
| DEMOTT, DEBORAH A., No. 3, at 1, 182 | SCHWARTZ, LOUIS B., No. 1, at 1 |
| FREDERICK, JEFFREY, No. 1, at 205 | SHUCHMAN, PHILIP, No. 4, at 66 |
| GEORGE, B.J., JR., No. 1, at 63 | SOMMER, A.A., JR., No. 3, at 115 |
| KAHN, LISA DAVIDSON, No. 1, at 252 | TRAUTMAN, DONALD T., No. 2, at vii, 105 |
| KAHN, MICHAEL H., No. 1, at 252 | UVILLER, H. RICHARD, No. 1, at 102 |
| LEFLAR, ROBERT A., No. 2, at 10 | VISCHER, FRANK, No. 2, at 131 |
| LEIWANT, BARRY D., No. 2, at 85 | VON MEHREN, ARTHUR T., No. 2, at vii, 27 |
| MANNING, BAYLESS, No. 3, at 3 | WEINTRAUB, RUSSELL J., No. 2, at 146 |
| MCCONAHAY, JOHN B., No. 1, at 205 | WEISS, ELLIOTT J., No. 3, at 63 |
| MECKLING, WILLIAM H., No. 4, at 13 | WEISTART, JOHN C., No. 4, at 107 |
| MILLER, HERBERT S., No. 1, at 132 | WESTON, J. FRED, No. 4, at 47. |
| MILLER, MERTON H., No. 4, at 39 | WITTE, ANN D., No. 1, at 230 |
| MOORE, JOHN H., No. 4, at 1 | WISHARD, WILLIAM VAN DUSEN, No. 3, at 222 |
| MORRIS, J.H.C., No. 2, at 44 | YOUNG, GORDON G., No. 3, at 146 |
| MULLIN, COURTNEY J., No. 1, at 205 | |

